

Gerald Heffner
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Dayton, MT 59914

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CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA**

GERALD HEFFNER

Plaintiff/Petitioner,

vs.

COLLECTION BUREAU SERVICES, INC.,
A Montana Corporation,
MONTANA ELEVENTH JUDICIAL DISTRICT
COURT, and the
LAKE COUNTY JUSTICE OF THE PEACE COURT,

Defendants.

Cause No. CV-10-04-M-DWM-JCL

**COMPLAINT FOR
TEMPORARY
RESTRAINING ORDER,
TEMPORARY
INJUNCTION AND
WRIT OF MANDATE**

JURISDICTION AND VENUE

This case is being filed pursuant to Title II of the Americans with Disabilities Act, (42 U.S.C. §§ 12131-34), Section 504 of the Rehabilitation Act, (29 U.S.C. § 794) and 42 U.S.C. 1983.

COMPLAINT

1. Presently Plaintiff Gerald Heffner is being sued in a civil action by Collection Bureau Services in *Collection Bureau Services, Inc., A Montana Corporation, v. Gerald Heffner*, Cause No. CV-09-141-CA, in the Lake County Justice of Peace Court before the Hon. Chuck Wall, Justice of the Peace.
2. In Collection Bureau Services' suit against Heffner, they are suing him for money that he does not owe.
3. Several years ago Heffner suffered from a stroke and suffered damage to his brain.

Ever since then he suffers from a debilitating speech impediment. He has a tendency of thinking one thing but saying something else that does not reflect what he intends to say. He also suffers from post traumatic stress disorder that in times of stress makes it virtually impossible for him to hear, comprehend and respond appropriately. He is unable to express himself adequately to represent himself in a legal action. Judge Wall of the Lake County Justice of Peace Court stated that Heffner's paperwork and answers were gibberish and could not be understood.

4. Not being able to represent himself and not having sufficient assets or income to hire a licensed attorney, Heffner requested the Justice of Peace Court to appoint an attorney to represent him. The Justice of Peace Court denied Heffner's request.

5. After the Justice of Peace Court denied his request that the court assign a licensed attorney to help him, Heffner informed Judge Wall that he wished to have Jerry O'Neil help him communicate with that court or represent him in that case.

6. With his disability, if Plaintiff is not allowed to have the help of a licensed attorney or the help of Jerry O'Neil or of someone else equally capable he will be denied his rights of due process and equal protection as protected by the Constitution of the United States.

7. For over 25 years Gerald Heffner has been a good friend of Jerry O'Neil. As friends O'Neil would be providing this service without cost to Heffner on a non-recurring basis.

8. On December 7, 2009 Hon. Chuck Wall, Justice of the Peace, granted permission to Heffner to have O'Neil represent him in that case.

9. Previously, on January 7, 2005, the Hon. Deborah Kim Christopher, sitting for the Montana Eleventh Judicial District Court, entered a *Judgment and Permanent Injunction*, against Jerry O'Neil. In this judgment the court stated that it will consider "[a]ppearing, or attempting to appear, as a legal representative or advocate for others in a court of this state" as indicia of the

practice of law by Jerry O'Neil.

10. In the *Judgment and Permanent Injunction*, at page 10, the Eleventh Judicial District Court also ordered that it “

will retain jurisdiction of this matter for the purpose of any party to apply for clarification or for direction. Jurisdiction is retained for modification of the injunction.

Jurisdiction is retained for enforcement of the judgment and injunction, and for punishment of any violation of its terms.”

11. Not wanting to be in non-compliance with the *Judgment and Permanent Injunction*, yet desiring to help his friend, on or about November 30, 2009, in Case Number DV-02-378(B) before the Eleventh Judicial District Court, Jerry O'Neil filed a *Motion For Permission To Approach Lake County Justice Court for Permission to Help Gerald Heffner*. In support of the motion O'Neil pointed out to the court that:

Regulations implementing Title II of the Americans with Disabilities Act (“Title II”)(42 U.S.C. §§ 12131-34) and Section 504 of the Rehabilitation Act (“Section 504”)(29 U.S.C. § 794) require public entities and recipients of federal financial assistance to ensure “effective communication” with persons by providing appropriate auxiliary aids and services. 28 C.F.R. § 35.160; 45 C.F.R. § 84.52(c)-(d), including qualified interpreters, 28 C.F.R. § 35.104; 45 C.F.R. § 84.52(d)(3).

12. To date O'Neil has not received any response to his *Motion For Permission To Approach Lake County Justice Court for Permission to Help Gerald Heffner*.

13. On January 6, 2010, O'Neil filed in the Eleventh Judicial District Court, a *Motion for Expedited Permission to Help Gerald Heffner*, in which he notified the court that the Justice of Peace Court granted permission to Gerald Heffner to have O'Neil represent him before said court and that Heffner's trial in Justice Court was set for January 19, 2010. O'Neil again cited the Americans with Disabilities Act and the Rehabilitation Act.

14. To date O'Neil has not received any response to his *Motion for Expedited Permission to Help Gerald Heffner* from the Eleventh Judicial District Court.

15. On or about January 7, 2010, Heffner filed a *Motion for Continuance* with the Lake County Justice of Peace Court in which he informed that court that O'Neil was still waiting for the Eleventh Judicial District Court to allow O'Neil to represent Heffner (with the Justice of Peace's permission) and that he needed a continuance in order to allow enough time for the Eleventh Judicial District Court to rule on O'Neil's *Motion for Expedited Permission to Help Gerald Heffner* and O'Neil's *Motion For Permission To Approach Lake County Justice Court for Permission to Help Gerald Heffner*.

16. Today Donna Heffner phoned the secretary of the Lake County Justice of the Peace Court and was informed that Gerald's *Motion for Continuance* was denied.

17. Without O'Neil's help Petitioner Heffner will be unable to defend himself in *Collection Bureau Services, Inc., A Montana Corporation, v. Gerald Heffner*, Cause No. CV-09-141-CA before the Lake County Justice of Peace Court.

PRAYOR FOR RELIEF

Plaintiff Gerald Heffner therefore prays for this Court to:

1. Issue a Temporary Restraining Order directing Defendant Lake County Justice of the Peace Court to stay the trial in *Collection Bureau Services, Inc., A Montana Corporation, v. Gerald Heffner*, Cause No. CV-09-141-CA before that court until after this federal court has an opportunity to hear this case.

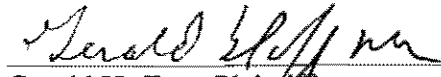
2. Issue a Temporary Injunction directing the Lake County Justice of the Peace Court to continue *Collection Bureau Services, Inc., A Montana Corporation, v. Gerald Heffner*, Cause No. CV-09-141-CA, until after it is established that Jerry O'Neil is allowed to represent Heffner in that action.

3. Issue an order mandating the Montana Eleventh Judicial District Court to allow

Jerry O'Neil to represent Plaintiff in *Collection Bureau Services, Inc., A Montana Corporation, v. Gerald Heffner*, Cause No. CV-09-141-CA before the Lake County Justice of Peace Court.

4. Issue an order requiring the Eleventh Judicial District Court to appear before this U.S. District Court to say why Plaintiff Gerald Heffner should not be allowed to be represented in the Lake County Justice of the Peace Court if they so contend.

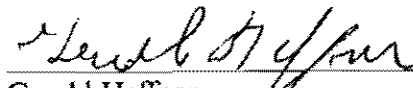
Respectfully submitted January 12, 2010.


Gerald Heffner, Plaintiff

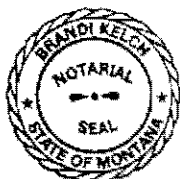
VERIFICATION

STATE OF MONTANA)
 : ss.
County of)

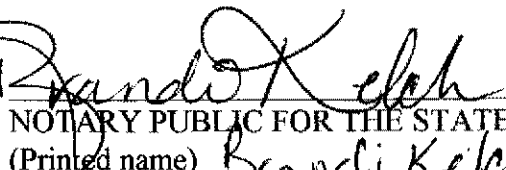
Gerald Heffner being first duly sworn upon oath states he has read the foregoing *Complaint for Temporary Restraining Order, Temporary Injunction and Writ of Mandate*, and declares the said is true and correct to the best of his knowledge.


Gerald Heffner

The foregoing was sworn to and subscribed before me by Gerald Heffner this ¹³~~12~~th day of January, 2010.



BRANDI KELCH
NOTARY PUBLIC for the
State of Montana
Residing at Polson, Montana
My Commission Expires
September 29, 2010


NOTARY PUBLIC FOR THE STATE OF MONTANA
(Printed name) Brandi Kelch
Residing at Polson
My Commission expires Sept 29, 2010